Date 11/12/00

Lois J. Schiffer
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
10th & Pennsylvania Avenue, N.W.
Washington, DC 20530

Date 10/25/00

Dianne M. Shawley
Senior Attorney
Environment and Natural Resources Division
U.S. Department of Justice
1425 New York Avenue, N.W.
Washington, DC 20005

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date 12/20/00

Steven A. Herman
Assistant Administrator
Office of Enforcement and Compliance
Assurance
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

FOR PLAINTIFF-INTERVENER the STATE OF MINNESOTA:

Gordon E. Wegwart, P.E.
Assistant Commissioner
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155

Peter L. Tester
Assistant Attorney General
Minnesota Attorney General's Office
445 Minnesota Street
900 North Central Like Tower
St. Paul, Minnesota 55101

FOR KOCH PETROLEUM GROUP, L.P.

Date 9-29-00

James L. Mahoney
Executive Vice President, Operations
P.O. Box 2256
Wichita, Kansas 67201

ATTACHMENT 1

Sustainable Skip Period Monitoring Program

For Purposes of this Consent Decree, the following skip rules shall apply to Koch's Pine Bend and Corpus Christi West and East refineries in lieu of 40 C.F.R. 63.168(d)(2) - (4) and 40 C.F.R. 60.483-2(b)(2) - (3).

1. Koch may move to less frequent monitoring on a unit-by-unit basis using the following criteria:
   a. At process units that have less than 2 percent leaking valves for 2 consecutive months, the owner or operator shall monitor each valve once every quarter, beginning with the next quarter.

   b. After 2 consecutive quarterly leak detection periods with the percent of leaking valves less than or equal to 1 percent, the owner or operator may elect to monitor each vavle once every 2 quarters.

   c. After 3 consecutive semi-annual leak detection periods with the percent of valves leaking less than or equal to 0.5 percent, the owner or operator may elect to monitor each valve once every 4 quarters.

2. Koch must return to more frequent monitoring on a unit-by-unit basis using the following criteria:
   a. If a process unit on a quarterly, semi-annual or annual monitoring schedule has a leak percentage greater than or equal to 2 percent in any single detection period, the owner or operator shall monitor each valve no less than every month, but can again elect to advance to less frequent monitoring pursuant to the schedule in 1, above.

   b. If a process unit on a semi-annual or annual monitoring schedule has a leak percentage greater than or equal to 1 percent, but less than 2 percent in any single detection period, the owner or operator shall monitor each valve no less than quarterly, but can again elect to advance to less frequent monitoring pursuant to the schedule in 1, above.

   c. If a process unit on an annual monitoring schedule has a leak percentage greater than or equal to 0.5

percent but less than 1 percent in any single detection period, the owner or operator shall monitor each valve no less than semi-annually, but can again elect to advance to less frequent monitoring pursuant to the schedule in 1, above.

ATTACHMENT 2

Koch Petroleum Group

Flare Policy

This document describes the process by which Koch Petroleum Group manages its flare systems at its refineries in Pine Bend, Minnesota and Corpus Christi, Texas.[1] The intent of this policy is to meet the requirements of NSPS Subpart A & J as that requirement may apply to process streams that are vented to the flare system. The primary goals of this policy are to avoid flaring through implementation of good engineering practices and to minimize the environmental impact of non-normal refinery operations through implementation of good air pollution control practices.

Koch proposes to comply with the requirements of Subpart J by not combusting process streams unless such combustion is in conformance with this policy. This policy defines startup, shutdown, malfunction and upset conditions for Koch's Refineries utilizing their flare gas recovery systems along with their procedures to (1) avoid and/or minimize flaring in reasonably foreseeable circumstances; (2) demonstrate good air pollution control practices during flaring events; and (3) seek continuous improvement by conducting root cause failure analyses on significant flaring events.

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[1] As you are aware, Koch has two refineries in Corpus Christi, referred to as the West and East Refineries. The West Refinery is equipped with a flare gas recovery system which is similar to, although not as large or robust as, the system at the Pine Bend Refinery. As you are also aware, the Corpus East Refinery currently does not have a flare gas recovery system, however, Koch will be installing one, pursuant to the Consent Decree. It will be subject to this policy when it is installed and operating.

Koch's three part approach is summarized as follows:

1. To follow good engineering practices that provide for a well-managed and well maintained flare system as well as the equipment that relieves to the flare system. To Koch, this means:
   A. A flare gas recovery system designed and operated to capture most anticipated loads to the flare system.
   B. A management system designed to keep the base load into the flare system within the system's recovery capacity.
   C. A management system designed to minimize, and, if feasible, prevent, unexpected loads to or unexpected failure of the flare gas recovery system.
2. To follow good engineering practices and good air pollution control practices during flaring events. To Koch, this means:
   A. Taking immediate action in response to unexpected flaring events to bring flare load back within the recovery system capacity.
   B. Reducing refinery operating rates and severities to eliminate or minimize flaring while responding to significant unexpected events, taking into account other environmental and safety factors.
   C. To carefully plan and execute infrequent planned events such as unit turnarounds and maintenance of critical refinery components to minimize or, if feasible, eliminate flaring.

3. To establish a process of continuous improvement of flare system operation, including:
   A. Conducting root cause failure analyses on significant flaring events; and
   B. Periodically reviewing, evaluating, and updating these flare policies and procedures.

The following sections will summarize Koch's policy regarding each of these items.

1. To follow good engineering practices that provide for a well-managed and well maintained flare system as well as the equipment that relieves to the flare system.

A. A flare gas recovery system designed and operated to capture most anticipated loads to the flare system.

The Koch Pine Bend and Corpus West Refineries each has installed and maintains a flare gas recovery system designed to prevent flaring of most streams vented to the flare system. The system at the Pine Bend Refinery, which has a level of excess capacity, is made up of two flare gas recovery compressors that remain operational at all times under normal conditions. The normal base load to the system can be managed so that it can be recovered by one compressor, if necessary. The system at the Corpus West Refinery consists of one flare gas recovery compressor which remains operational at all times under normal conditions. The baseload to the system is managed so that it can be recovered by this compressor under most operating scenarios. Thus, these system designs incorporate good engineering practices in regard to

handling base load. The flare gas recovery system to be installed at the Corpus East Refinery pursuant to the Consent Decree will have a similar design.

B. A management system designed to keep the base load into the flare system within the system's recovery capacity

Along with the recovery capacity, Koch has implemented a process for managing the base load to the system. The process provides that the Refinery Shift Manager (RSM) has responsibility for minimizing the flare system base load relative to the capacity of the recovery system. No individual within the refinery can commence a planned activity that can possibly add significant load to the flare system without first obtaining the approval of the RSM (an RSM is on duty within the refinery 24 hours per day, 7 days per week). Prior to granting approval, the RSM will evaluate current load to the system and determine if the projected load from the requested activity can be recovered. If not, the event will be delayed or other measures will be taken to first decrease flare system load in order to prevent or minimize flaring.

The RSM also is charged with monitoring base load into the flare system on a regular basis. If the load is trending upward such that unexpected flaring occurs, the RSM implements a procedure to determine the reasons for that increased load. This procedure occurs pursuant to a flare system management flowchart which prioritizes the investigation in an effort to quickly identify the source. If the source of increased load is not readily identified, the refinery implements a full flare system audit, evaluating all equipment in the refinery that may

relieve to the flare system to identify possible unexpected sources of flaring.

C. A management system based on good engineering practices designed to minimize, and, if feasible, prevent, unexpected loads to or unexpected failure of the flare system

Over the past two years, the Koch Refineries have been implementing a Reliability Centered Maintenance (RCM) program to ensure proper maintenance of refinery equipment. The RCM process was designed for and first implemented by the airline industry to help ensure against aircraft failure. The process also is common among nuclear power plants. RCM is not as common in other industrial applications, but Koch has selected it as the most effective way to ensure an appropriate level of equipment reliability.

The key to RCM is to identify each refinery system, analyze its function and, in a group setting with many different disciplines represented, determine what events could jeopardize that system's performance. From this process flows a set of priorities based on how critical a given piece of equipment is and a series of strategies for the maintenance of each piece of equipment. These strategies range from periodic inspection to continuous monitoring, to preventive or predictive maintenance at appropriately determined intervals to repair replacement and/or re-engineering of critical refinery components.

Maintenance priorities are determined based on a risk ranking system that considers the likelihood of any given occurrence multiplied by the consequences of the occurrence. In that ranking system, environmental and safety consequences are weighted more heavily than any

other single factor (up to twice as high as any other factor). Thus, this ranking process prioritizes maintenance response and preventive or predictive maintenance on the components critical to good environmental performance.

Another result of the prioritization process is the creation of a critical components list, which is a refinery-wide list of equipment with a high risk ranking. This equipment is specifically identified for more rigorous preventive and/or predictive maintenance. In addition, the work order ranking system is designed to ensure that predictive maintenance procedures are given sufficient priority that they are conducted on a routine basis.

As the RCM process is underway, Koch also is conducting a parallel review of critical operating parameters for each unit. Currently, Koch utilizes OSHA Process Safety Management (PSM) constraints to define critical equipment limitations, ensuring that equipment will be operated within safe limits and minimizing the potential for flaring events. Using these process safety management parameters as a baseline, the Koch RCM team also is in the process of identifying optimal reliability guidelines for the operation of each unit. These reliability parameters will normally be set more conservatively than the PSM limits in an effort to lengthen equipment life and ensure more predictable equipment performance. As they are developed, these guidelines will be incorporated into the control system and will assist operators as they manage the refinery process.

A final component of the RCM process is conducting a root cause analysis of an equipment failure event. This analysis, which is separate from the root cause analysis of flaring events discussed in Section 3.A. below, is necessary to ensure continuous improvement of equipment maintenance strategies.

As in the airline and nuclear industry, the intent of the Koch RCM process is to prevent or minimize unexpected failure. For purposes of this flare policy, the RCM process will help ensure proper maintenance of refinery processes that, if they fail, will vent to the flare system. The RCM process also will help ensure proper maintenance of the flare system itself.

2. To follow good engineering practices and good air pollution control practices during flaring events.

A. Taking immediate action in response to unexpected flaring events to bring flare load back within the recovery system capacity.

As discussed above, Koch has in place a system to manage flare load so as to avoid or minimize flaring and to reduce flare load when it begins trending upward. . When unexpected flaring occurs, the RSM will implement the flare investigation procedure described above with the goal of identifying the source of flaring and reducing flare load back within the recovery capacity, if possible. This is accomplished either by remedying the source of the flare load or reducing, where feasible, load from other sources.

B. Reducing refinery operating rates to eliminate or minimize flaring while responding to significant unexpected events, taking into account other environmental and safety factors.

Most often, the source of an unexpected flaring event will be obvious and typically is associated with some unexpected failure within one of the process units. As discussed above, once the source of the flaring is identified, the refinery implements a process to remedy the source as quickly as possible. This process is more difficult when the system failure is more extensive and the source cannot rapidly be remedied. Koch has in place a decision framework to assist in evaluating the available choices and making a choice that reflects both good engineering practice as well as good air pollution control practice.

The framework is based on the following two priorities:

Koch will first take measures to ensure that its people and its equipment are safe. The goal is to prevent a system failure from becoming worse or even catastrophic. Equipment is designed to relieve to the flare system specifically in order to meet this goal.

Koch will then take measures to minimize environmental impact. The first step will be to determine if an immediate remedy (using 30 minutes as a benchmark) is available. For example if a compressor or heater has shut down, Koch will investigate whether an expedient restart is possible. If an immediate remedy is not available, the RSM will develop and implement a contingency plan. The contingency plan will involve cutting process rates and reducing the severity of operating conditions to reduce gas generation rates, thereby reducing or eliminating the flaring. The plan will focus on rate cuts to the unit that is experiencing difficulty (ultimately stopping just above the unit's

turndown rate, the rate below which the unit must be shut down) as well as rate cuts or processing changes at other units within the refinery with the goal of eliminating flaring as soon as possible. This may be accomplished by reducing overall refinery gas generation rates or making additional gas recovery capacity available. The refinery maintains a matrix of various options for shifting gas plant streams within the refinery to support these operating decisions. This matrix is consulted in order to evaluate possible options for isolating or reducing flow to the unit experiencing difficulty. If such opportunities exist, they will be implemented.

The plan does not normally include the immediate shut down of a unit, as that most often would increase flaring significantly in the short term. This decision must be evaluated as an incident progresses. If an equipment failure can be corrected within a 12 to 24 hour period, it is rarely, if ever, a good idea to shut down a unit. The emissions (and additional flaring) associated with unit shutdown and startup normally will exceed the emissions associated with some continued flaring from a unit operating just above its turndown rate. In addition, good engineering practices and safety concerns dictate that unit shutdown be avoided if possible. By their nature, unit shutdowns and startups are periods of transient operation, posing greater safety concerns and increasing the likelihood of process upsets which could aggravate flaring from the affected unit and/or result in flaring from up- and downstream units.

Nevertheless, if all other steps to eliminate flaring have been implemented, and flaring continues after a 24 hour period, the refinery will consider unit

shutdown as an option. Again, that measure must be carefully weighed in light of the potential safety, environmental and engineering consequences. The nature of the affected process and the difficulty of the associated shutdown and startup procedures must be weighed in this decision. Any decision to continue flaring after the 24 hour period will be made in consultation with members of the local community as well as with local and state regulatory authorities.

C. To carefully plan infrequent planned events such as unit turnarounds and maintenance of critical refinery components to minimize or, if feasible, eliminate flaring

In order to maintain operating units in a safe and efficient operating condition, Koch, as well as most of the refining industry, has implemented the good engineering practice of periodically performing maintenance "turnarounds" on its process units. During a turnaround, process units are shut down so equipment can be opened, cleaned, inspected and repaired. Flaring may occur during shutdown and subsequent startup of these units.

As a typical unit is being shutdown, safety considerations as well as good engineering practice dictates that the unit be vented to the flare gas system. This occurs as the process rates are reduced to the point where the unit reaches a point of unstable operation. Gas recovery equipment must be shut down and further reductions without venting to the flare system may create risk to personnel and equipment. The unit must then be vented to the flare system until all excess process

gasses have been removed. Some process areas require additional gas purging to the flare to cool equipment or to maintain catalyst activity. Further, prior to opening the unit for work, it must be steamed out to remove remaining hydrocarbons and allow for a safe work environment. The flare system exists to safely and properly manage this flow. Essentially the reverse procedure must be followed for unit startup.

The environmental challenge associated with turnaround is to manage the timing and nature of unit shutdown and startup as well as the nature and rate of feed into any given unit so as to minimize the nature and extent of flaring associated the such events. Koch has implemented a plan to accomplish this task.

The following turnaround planning and execution stages are utilized to ensure good air pollution control practices and to minimize flaring activity during shutdown and startup events:

- Scheduling individual unit turnarounds.
- Identifying specific turnaround activities
- Identifying potential environmental impacts of each activity and developing mitigation plans to address adverse impacts.
- Executing unit shutdowns and startups to manage the overall refinery impacts and meet environmental objectives.
- Review of turnaround execution and implementation of improvement for the next turnaround.

The following is a discussion of each of these stages.

Scheduling individual unit turnarounds.

The length of the turnaround cycle for any given unit depends on the type of process unit and individual unit operating history. Koch schedules each process unit turnaround based on a combination of standard industry practices and local knowledge.

During each turnaround period, Koch performs turnarounds on units which have reached or are approaching the end of their respective turnaround cycles. Units are also selected for a particular turnaround based on their impacts on related process units. This ensures that the units remaining online are operating within their processing and environmental constraints.

The unit turnaround schedule is also examined for opportunities to perform periodic maintenance on related process units. This is done by utilizing spare capacity created by the turnaround to get at equipment to perform these activities with reduced environmental impact.

Identifying specific turnaround activities

Once a unit is scheduled for turnaround, a list of maintenance requirements is developed. The list is developed based on previous turnaround history and recent operating data. This ensures that equipment is well maintained and operates reliably between turnarounds.

Identifying potential environmental impacts of each activity and developing mitigation plans and goals to address adverse impacts.

The list of turnaround activities is analyzed for potential environmental impacts. This list includes activities associated with unit shutdown, vessel purging and degassing, preparation for startup and unit startup was well as planned maintenance activities. An environmental mitigation strategy is developed for each activity.

Executing unit shutdowns and startups to manage the overall refinery impacts

Timing of the actual unit shutdowns and startups is coordinated through the RSM to ensure proper environmental management of flaring activity. The RSM adjusts the shutdown

and startup schedules to account for schedule delays and unplanned events which may occur. Schedules are also adjusted based on other activities that may affect flare load so as to maximize the use of the flare gas recovery system and to help meet the flaring control goals.

Review of turnaround execution and implementation of improvement for the next turnaround.

Following each turnaround, plans are reviewed to identify which parts of the plan worked well and which parts need improvement. Review findings are then incorporated into the next turnaround plan.

In addition, inspection information gathered during the turnaround is used to assess operation, maintenance and engineering design practices and to improve these practices for improved operational reliability in the future.

Planned Maintenance On Critical Components

The refinery also performs planned maintenance on critical refinery components at times other than full unit turnaround. Such maintenance, which is contrasted with the need to shut down a component because of an unplanned event (discussed in Section 2B above), will occur pursuant to an established maintenance program based on good engineering practices. In addition, at Corpus West, periodic flare entries are required to repair and replace leaking relief valves. During this operation, the flare gas recovery system must be bypassed.

Flaring may occur during such events as a result of the need to isolate the piece of equipment on which maintenance is being performed. Any such flaring will be pre-evaluated and managed in accordance with the policies discussed above. That is, planned maintenance will be performed only when the refinery can flare consistent with safety and good engineering practices. The maintenance event will be planned carefully to minimize flaring. All feasible measures will be taken to reduce the operating rate of the affected unit and other units' rates will be adjusted to ensure the lowest possible load to the flare system.

The refinery expects such events to be of limited duration (typically less than 24 hours) and to take place only in situations where proper maintenance dictates that the benefit of the work and the associated flaring outweighs the risk of unexpected failure which may result if the work is delayed until the next full unit shutdown.

For example, good engineering practices may dictate that certain components undergo maintenance more frequently than the turnaround schedule of the units to which they belong. While it is prudent to maintain those components according to a proper schedule, it is rarely, if ever, prudent, from an environmental, safety, or engineering standpoint, to bring an entire unit down to accomplish that maintenance.

3. To establish a process of continuous improvement of flare system operation.

A. Conducting root cause failure analyses on significant flaring events

As part of this policy and, in an effort to ensure continued improvement of flare system management, Koch will undertake a Root Cause Failure Analysis (RCFA) of any unplanned significant flaring event. For purposes of this policy, "significant flaring event" is defined as any single event from which SO2 emissions exceed an applicable permit limit 500 pounds in a 24-hour period and which are not associated with a planned startup, shutdown, or maintenance activity. For any such event, appropriate refinery personnel will meet, conduct the analysis, identify and implement any feasible corrective actions to prevent recurrence of the event. Koch shall provide a summary of all "significant Hydrocarbon Flaring Event(s) in its quarterly excess emissions report to the appropriate State agency.

B. Periodically reviewing, evaluating, and updating these flare policies and procedures.

Koch is committed to ensuring ongoing optimal management of its flare system. Part of that effort will be to review this policy on an annual basis with key operations and maintenance

personnel to ensure continued adherence to the policy and to make any needed improvements to the policy.

ATTACHMENT 3

RCRA CONSENT AGREEMENT AND FINAL ORDER

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	Docket No. RCRA-5- 2000-010
	)	
KOCH PETROLEUM GROUP, L.P.	)	CONSENT AGREEMENT
12555 U.S. HIGHWAY 55	)	AND FINAL ORDER
ROSEMOUNT, MINNESOTA 55068	)	
	)	
EPA ID No.: MND 000 686 071	)	
	)	
Respondent.	)	
	)	

I. PREAMBLE

On this date, an administrative Complaint and Proposed Compliance Order is simultaneously being filed in this matter pursuant to Section 3008(a) of the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. § 6928(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, as revised at 64 Fed. Reg. 40138 (July 23, 1999) (Consolidated Rules). The Complainant is, by lawful delegation, Chief of the Enforcement and Compliance Assurance Branch, Waste, Pesticides and Toxics Division, Region 5, United States Environmental Protection Agency (EPA). The Respondent is Koch Petroleum Group, L.P.

II. STIPULATIONS

The Parties, desiring to settle this action, enter into the following stipulations:

Preliminary Statement

1. Respondent is simultaneously being served with a copy of the administrative Complaint in this matter. The Complaint alleges violations of the authorized Minnesota hazardous waste program in Counts 1 through 5, and 16 through 19; violations of Federal statutes and regulations pertaining to listed F037 waste in Counts 6 through 15; and violations of Federal RCRA Air Emission Standards for Tanks, Surface Impoundments, and Containers in Counts 12 and 19. The Complaint is incorporated herein by reference.

2. Respondent is Koch Petroleum Group, LP, which is and was at all times relevant to this Complaint, along with its corporate predecessor Koch Refining Company, the owner and operator of a facility located at 12555 U.S. Highway 55, Rosemount, Minnesota, 55068 (the Facility). Koch Petroleum Group, LP and Koch Refining Company are referred to collectively herein below as "Respondent."

3. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), Minnesota (MN) Rules Part

7045.0200, subpart 66, and 40 C.F.R. § 260.10.

4. The Complaint proposes that Respondent be assessed a civil penalty of $3,500,000 calculated in accordance with Sections 3008(a) and 3008(g) of RCRA, and with reference to the "RCRA Civil Penalty Policy" (October 1990) for the violations alleged in the Complaint.

5. As a result of information exchanged during settlement negotiations, EPA and Respondent agree that resolution of this matter through entry of this Consent Agreement and Final Order (CAFO) is an appropriate means of resolving this matter and have agreed to enter into this CAFO.

6. This CAFO sets forth the agreements between EPA and Respondent that are intended to fully resolve the allegations of the Complaint; Respondent will not be required to file an Answer to the Complaint.

7. This CAFO is issued to conclude the administrative penalty matter initiated by the EPA administrative Complaint. The Complaint was issued for all of the RCRA violations for which Complainant seeks enforcement as identified during inspections of Respondent's facility during June 1998 and May 1999. The parties intend to incorporate the terms of this CAFO into a Consent Decree which is being negotiated between Koch and EPA, in order

to obtain judicial confirmation and enforceability for the schedules and injunctive relief set forth in this CAFO. Nothing shall prevent the parties from altering in such Consent Decree the scope of release for these violations.

General Terms of Settlement

8. Respondent admits that EPA has jurisdiction over the matter, neither admits nor denies the findings of fact and conclusions of law in the Complaint, agrees that settlement of this action is in the best interests of the parties and in the public interest, and consents to the terms of this CAFO as set forth herein.

9. Respondent hereby waives its right to a judicial or administrative hearing on any issue of law or fact set forth in the Complaint or this CAFO, and waives any and all rights to appeal this settlement and/or CAFO.

10. Respondent agrees to implement the Compliance Order included below as part of this CAFO, and certifies that it is now otherwise in compliance with the requirements of RCRA set forth in the Complaint.

11. If Respondent fails to comply with any provision contained in this CAFO, Respondent waives any rights it may possess in law or equity to challenge the authority of EPA to

bring a civil action in the appropriate United States District Court to compel compliance with the CAFO and/or to seek an additional penalty for the noncompliance with the CAFO.

12. Pursuant to Sections 3008(a) and 3008(g) of RCRA, and based on the foregoing, the nature and seriousness of the violations alleged in the Complaint, the potential harm to human health and the environment, Respondent's willfulness/negligence or lack thereof and history of noncompliance, the ability of Respondent to pay penalties, any good faith efforts by Respondent to comply, information exchanged by the parties, consideration of the steps Respondent took and has agreed to take to achieve compliance, the fact that Respondent had settled similar violations with Minnesota Pollution Control Agency (MPCA), Respondent's prompt and cooperative resolution of this penalty matter, and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of $3,500,000. Complainant accordingly assesses a civil penalty in the amount of $3,500,000.

13. Respondent agrees to the assessment of the civil penalty set forth in this CAFO for the violations alleged in the Complaint. The parties anticipate that payment of the penalty will occur before November 15, 2000 under provisions of the

Consent Decree under negotiation.

Penalty Payment

14. If the penalty is not paid by November 15, 2000 under a federal district court Consent Decree, then by no later than November 30, 2000, Respondent shall submit a cashier's or certified check, to the order of the "Treasurer of the United States of America," in the amount of THREE MILLION FIVE HUNDRED THOUSAND DOLLARS ($3,500,000). The check shall be mailed to:

U.S. EPA, Region 5, Regional Finance Office
P.O. Box 70753
Chicago, Illinois 60673

The name of the Respondent and the Docket Number of this proceeding shall be clearly marked on the face of the check. Interest and late charges shall be paid as specified as below.

15. A transmittal letter, indicating Respondent's name, complete address, and this case Docket Number must accompany the payment. Respondent shall send a copy of each check and transmittal letter to:

1) Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (MF-19J)
Chicago, Illinois 60604;

2) Ivonne Vicente, Compliance Section
Enforcement and Compliance Assurance Branch
Waste, Pesticides and Toxics Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (DE-9J)
Chicago, Illinois 60604; and

3) Andre Daugavietis
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (C-14J)
Chicago, Illinois 60604.

16. Respondent's failure to timely comply with any material and substantial provision of this CAFO shall render the entire unpaid portion of the assessed penalty of $3,500,000 immediately due and payable, together with all accrued interest. Such failure may also subject Respondent to a civil action pursuant to Section 3008(c) of RCRA to collect penalties for any noncompliance with the Order (as well as injunctive relief) and any unpaid portion of the assessed penalty, together with interest, handling charges and nonpayment penalties as set forth below. In any such collection action, the validity, amount and appropriateness of this CAFO or the penalty and charges assessed hereunder shall not be subject to review.

Late Payment Provisions

17. Pursuant to 31 U.S.C. §§ 3717 and 3731, Respondent shall pay interest and penalties on debts owed to the United States and a charge to cover the costs of debt collection, including processing and handling costs and attorneys fees. If the civil penalty is not paid pursuant to the terms of this CAFO,

Respondent shall pay the following amounts:

A. **Interest.** Any unpaid portion of a civil or stipulated penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).

B. **Monthly Handling Charge.** Respondent shall pay a late payment handling charge of $20.00 on any late payment, with an additional charge of $10.00 for each subsequent 30-day period over which an unpaid balance remains.

C. **Non-Payment Penalty.** On any portion of a civil or stipulated penalty more than ninety (90) days past due, Respondent shall pay a non-payment penalty of six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which accrue or may accrue under Subsections A and B, above.

General Provisions

18. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of RCRA and other Federal, state or local laws or statutes.

19. Respondent's compliance with this CAFO shall constitute compliance with applicable provisions of RCRA and other Federal, state or local laws or statutes.

20. Nothing in this CAFO shall be construed to be a ruling on, or determination of, any issue related to any federal, state

or local permit.

21. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law, other than the specific matters resolved herein.

22. Notwithstanding any other provision of this CAFO, EPA may bring an enforcement action pursuant to Section 7003 of RCRA, or other statutory authority, if any handling, storage, treatment, transportation or disposal of solid or hazardous waste may present an imminent and substantial endangerment to human health or the environment.

23. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

24. This CAFO represents a full and final settlement of any and all claims by EPA against Respondent arising from the Complaint. The Complaint was issued for all of the RCRA violations for which Complainant seeks enforcement as identified during inspections of Respondent's facility during June 1998 and

May 1999.

25. The information required to be maintained or submitted pursuant to this CAFO is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501 et seq.

26. This CAFO shall be binding upon all Parties to this action, and their successors and assigns. The undersigned representative of each Party to this CAFO certifies that he or she is duly authorized by the Party whom he or she represents to enter into the terms and bind that Party to them.

27. Respondent shall give notice and a copy of this CAFO to any successor in interest prior to any transfer of ownership or operational control of the Facility.

28. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with, or to be served with and reply to, any memorandum or communication addressed to the Director, Waste, Pesticides and Toxics Division, or his superiors, where the purpose of such discussion, memorandum or communication is to persuade such an official to accept and issue the CAFO.

29. Failure to comply with any provision of this CAFO or Compliance Order shall subject Respondent to injunctive relief in U.S. District Court and liability for a civil penalty of up to

Twenty-Seven Thousand Five Hundred Dollars ($27,500) for each day of continued noncompliance, pursuant to Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), as amended.

30. Each party shall bear its own costs, attorney fees and disbursements in this action.

31. This CAFO constitutes the entire agreement and settlement between the parties.

32. Respondent and EPA agree to issuance and entry of the accompanying CAFO.

33. This CAFO shall become effective on the date it is signed by the Director, Waste, Pesticides and Toxics Division.

III. COMPLIANCE ORDER

34. The foregoing Consent Agreement is Hereby Stipulated, Agreed, and Approved for Entry.

35. Respondent shall, immediately upon the effective date of this CAFO (except as otherwise specified in this Order), cease all treatment, storage, or disposal of any hazardous waste except such treatment, storage, or disposal that is in compliance with the schedule, procedures, interim plans or requirements specified in this Order, the applicable standards for hazardous waste treatment, storage, and disposal facilities, and the Final Permit issued by MPCA for the Facility.

36. Respondent shall comply with the schedule, procedures, interim plans and requirements specified in this Order and shall otherwise, immediately upon the effective date of this CAFO (except as otherwise specified in this Order), achieve and maintain compliance with the standards applicable to generators of hazardous waste..

37. Respondent shall, within thirty (30) days of the effective date of this CAFO, submit a written closure and post-closure plan in accordance with 40 C.F.R. § 264.110 through 264.120 to EPA, with a copy to MPCA, for: the two piles of F037

containing coke materials located in the vicinity of the coker ponds ("the Managed Piles") as well as the areas where the piles have been stored; and the lower and upper washpads.

38. Respondent shall, within thirty (30) days of the effective date of this CAFO, submit a written closure and post-closure plan in accordance with MN Rules 7045.0486 through 7045.0492 to MPCA, with a copy to EPA, for the fire training collection basin.

39. Respondent shall, by no later than July 1, 2000, submit a written closure and post-closure plan in accordance with MN Rules 7045.0486 through 7045.0492 (40 C.F.R. § 264.110 through 264.120) to MPCA, with a copy to EPA, for closure of the Facility's B5 basin to be completed by no later than December 31, 2001.

40. Respondent certified on November 15, 1999, in accordance with its hazardous waste facility permit MN0006886071 and MN Rules Part 7001.0070 and 7001.0540, that the coker ponds at the Facility were closed in accordance with the MPCA-approved closure plan and additional closure workplans described therein. Respondent's certification that final closure of the coker ponds has been accomplished in accordance with the MPCA-approved closure plan is subject to MPCA approval. Respondent certifies

that final closure of the coker ponds has been accomplished in accordance with the "Coker Pond Closure Plan, Contingent Closure Plan, and Contingent Post-Closure Plan" dated October 28, 1998.

41. Upon receiving MPCA approval of any written closure plan, or any other plan or schedule, for any RCRA units managing listed or characteristic waste for which MPCA has an authorized hazardous waste program, Respondent shall implement the approved closure plan in accordance with the specifications and schedule contained therein, as modified by MPCA. In the event that the RCRA unit manages F037 waste and that EPA is the primary agency with authority for F037 waste, upon receiving EPA approval of any written closure plan, or any other plan or schedule, Respondent shall implement the approved closure plan in accordance with the specifications and schedule contained therein, as modified by EPA.

42. Recognizing that EPA considers that certain materials currently stored by Respondent at its Facility in the Managed Piles constitute listed hazardous wastes; and that Respondent considers that these materials are not listed hazardous wastes, but are product coke suitable for sale as fuel; and recognizing that Respondent has agreed to manage these materials as if they were listed hazardous wastes and store them in a manner

consistent with Paragraphs 49, 50 and 51 of this CAFO, in order to reach agreed settlement of this matter; Respondent may submit a petition to the agency with primary authority (in accordance with 40 C.F.R. §§ 260.20 and 260.22) to exclude (or "de-list") from the listing of hazardous wastes under Subpart D of 40 C.F.R. Part 261, the following materials stored at its Facility: (1) the Managed Pile in the vicinity of the coker ponds that currently stores materials to be managed as listed F037 waste (approximate volume 10,000 cubic yards); and (2) the Managed Pile in the vicinity of the coker ponds that currently stores materials to be managed as listed F037 waste mixed with product coke (approximate volume 40,000 cubic yards).

43. Respondent shall submit a copy of any de-listing petition subject to this CAFO to EPA and MPCA to ensure that both Agencies are aware of the petition and its contents.

44. The timing of the de-listing process shall be as set forth in Attachment A to this CAFO, and interim milestone dates as set forth in the Attachment may be modified in writing by Koch and the agency with primary jurisdiction over the de-listing petition at the time of the dates to be modified.

45. If, at any time after the effective date of this CAFO, Respondent does not comply with its interim milestone deadlines

regarding the de-listing petition as set forth in Attachment A or as modified by the agency with primary authority at the time, or if Respondent elects to withdraw its petition, Respondent shall ship all of the material from the Managed Piles to a designated facility or facilities suitable for the disposal of F037 listed hazardous wastes (as defined at 40 C.F.R. § 260.10) or otherwise recycle the materials on site in a manner consistent with regulations applicable to F037 listed hazardous waste. Respondent shall complete such shipments or other disposition within sixty (60) days of the event triggering the requirement, and thereafter cease storing any such materials at its Facility. Respondent shall ensure that such shipments are in full compliance with RCRA requirements, including manifests, if the material is managed off-site.

46. Beginning no later than December 31, 2001, unless the petition has been granted (or unless EPA and Respondent have jointly agreed to amend this final milestone date, in which case the amended date shall control), Respondent shall ship all of the material from the Managed Piles to a designated facility or facilities suitable for the disposal of F037 listed hazardous wastes (as defined at 40 C.F.R. § 260.10) or otherwise recycle the materials on site in a manner consistent with regulations

applicable to F037 listed hazardous waste. Respondent shall complete such shipments or other disposition by no later than March 1, 2002 (or 60 days from a modified final milestone date), and cease storing any such materials at its Facility. Respondent shall ensure that such shipments are in full compliance with RCRA requirements, including manifests, if the material is managed off-site.

47. If before December 31, 2001, the petition is denied by the agency with RCRA authority over F037 wastes at the time, and the denial becomes final, Respondent shall immediately ship all of the material from the Managed Piles to a designated facility or facilities suitable for the disposal of F037 listed hazardous wastes (as defined at 40 C.F.R. § 260.10) or otherwise manage and dispose of the materials in a manner appropriate for F037 listed wastes, subject to approval of the agency with RCRA authority over F037 wastes at the time. If before December 31, 2001, the de-listing petition is denied, Respondent may exercise any appeal rights it may have under law or regulation, and if Respondent appeals the denial it may begin the shipments or other disposition of the materials as of December 31, 2001 (or a modified milestone date). Respondent shall complete the shipments or other disposition within sixty (60) days of the

petition denial becoming final (or by March 1, 2002, if it has filed an appeal after denial of the petition) and cease storing any such materials at its Facility. If the material is managed off-site, Respondent shall ensure that such shipments are in full compliance with RCRA requirements applicable to shipments of F037 wastes, including manifests.

48. EPA has been the primary agency with authority over F037 listed hazardous wastes, but arrangements are pending under which EPA would delegate authority over F037 listed hazardous wastes to MPCA. The petition to exclude the Managed Piles from the listing of hazardous wastes shall be submitted to the agency (EPA or MPCA) which has primary authority over F037 listed wastes. A copy of the petition shall be submitted to the other agency. The Parties contemplate that even if the petition is originally submitted to EPA, it will be transferred to MPCA at such time, if any, that MPCA received delegated authority to regulate F037 listed hazardous wastes. If prior to Respondent's full compliance with the requirements of this Order, MPCA receives final authorization from EPA to administer and enforce Minnesota's hazardous waste program for F037 waste, Respondent shall submit any plans, petitions or other documents under this Order relating to F037 waste to MPCA for administration by MPCA.

Respondent shall submit a copy of all such documents to EPA. Upon such authorization by MPCA, EPA shall retain sole authority to revise any deadlines set forth in this CAFO (with the exception of the interim milestone dates referenced in Par. 44 and Attachment A), and Respondent shall request any extensions in writing to EPA, together with the reason(s) for such request and a proposed alternative deadline.

49. For the two Managed Piles located in the vicinity of the coker ponds at the Facility, Respondent certifies that it has installed, and shall continue to operate and maintain a run-on and run-off system and control wind dispersal in accordance with 40 C.F.R. § 264.251(g) through (j).

50. For the two Managed Piles located in the vicinity of the coker ponds at the Facility, Respondent shall continue to conduct weekly inspections and inspections after storms to detect deterioration, malfunctions, or improper operation of the run-on and run-off control systems and proper functioning of the wind dispersal control system pursuant to 40 C.F.R. § 264.254(b).

51. For the two Managed Piles and the areas where the piles were located, the B5 basin, lower and upper washpads, and the fire training collection basin, Respondent certifies that it has amended its financial test to comply with the financial assurance

requirements of closure and post-closure in accordance with MN Rules 7045.0504 and 7045.0508 (40 C.F.R. §§ 264.143 and 264.145).

52. Respondent shall notify EPA in writing upon achieving compliance with this Order, and with each of above paragraphs 37, 38, 39, 45, 46, 47 individually, within fifteen (15) calendar days after the date compliance is achieved.

53. If any required action has not been taken or completed in accordance with any requirement of this Order, within ten (10) calendar days after the due date set forth in this Order, Respondent shall notify EPA of the failure, the reason for the failure, and the proposed date for compliance.

IV. STIPULATED PENALTIES FOR MANAGED PILE STORAGE

54. In the event that the Managed Pile materials referenced in Paragraph 42, above, are not de-listed by December 31, 2001 (or a modified final milestone date), or a denial of Respondent's de-listing petition becomes final before such date, Respondent shall be liable for stipulated penalties of $1,430 per day to the United States.

55. Stipulated penalties under this section shall accrue from the earliest of: 1) December 31, 2001 (or a modified final milestone date); 2) the date of any interim milestone deadline

set forth in Attachment A (as modified) that Koch does not comply with; 3) the date a withdrawal or denial of the de-listing petition becomes final (subject to the appeal provisions in Par. 47), or 4) the date of this CAFO if no de-listing petition is filed; and shall continue to accrue until Respondent certifies that the Managed Pile materials have been fully removed or otherwise disposed. The stipulated penalties will be waived if the condition set forth in paragraph 57, below is met.

56. Respondent shall pay these stipulated penalties within fifteen (15) days of receipt of written demand by EPA for such penalties after such penalties are accrued. Method of payment shall be in accordance with the provisions of Paragraphs 14 through 17, above. Interest and late charges shall be paid as stated therein.

57. If the Managed Pile materials referenced in Paragraph 42, above, are de-listed by December 31, 2001 (or a modified final milestone date), Respondent shall not be liable for stipulated penalties applicable under this section.

VI. SUBMITTALS AND NOTIFICATIONS

58. All reports, plans, submissions, and notifications to EPA required by this Order shall be submitted to:

U.S. EPA, Region 5
Waste, Pesticides and Toxics Division
Enforcement and Compliance Assurance Branch
Attention: Ivonne Vicente (DE-9J)
77 West Jackson Boulevard
Chicago, Illinois 60604

59. Respondent shall submit a copy of all documents and correspondence regarding this CAFO to MPCA at the address specified below.

60. The parties plan to have the terms of this CAFO incorporated into a federal district court consent order or decree. This CAFO shall continue in full force and effect whether or not its terms are so incorporated.

61. Whenever, under the terms of this CAFO, notice is required to be given or a document sent to Respondent or MPCA, it shall be directed to the individuals at the addresses specified below:

To Respondent:

Jeff C. Wilkes, Vice President
Koch Petroleum Group, L.P.
P.O. Box 64596
Saint Paul, Minnesota 55164

To MPCA:

Thomas Townsend
Minnesota Pollution Control Agency
520 Lafayette Road N.
Saint Paul, Minnesota, 55155-4194.

The terms of the forgoing Consent Order, including Compliance Order are stipulated and agreed to by the Parties as follows:

By: _____ Date: 8/24/00, 2000

Jeff C. Wilkes, Vice President
Koch Petroleum Group, L.P.
Respondent

By: _____ Date: August 30, 2000

Joseph M. Boyle, Chief
Enforcement and Compliance Assurance Branch
Waste, Pesticides and Toxics Division
Complainant

RCRA-5- 2000 - 010

IN THE MATTER OF:
Koch Petroleum Group, L.P.
12555 U.S. Highway 55
Rosemount, Minnesota 55068

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent, Koch Petroleum Group, L.P., is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement, including the terms of the Compliance Order, effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31 [64 Fed. Reg. 40138 (July 23, 1999].

Dated: Aug. 30, 2000

Robert L. Springer, Director
Waste, Pesticides and Toxics Division
U.S. Environmental Protection Agency,
Region 5

RCRA-5- 2000-010

Attachment A

KOCH PETROLEUM GROUP, L.P., CONSENT AGREEMENT AND FINAL ORDER

De-listing Petition Schedule

This schedule is to be implemented under paragraph 44 of the CAFO. The interim milestone dates set forth in this Attachment may be modified in writing by Koch and the agency with primary jurisdiction over the de-listing petition at the time of the dates to be modified. If Koch has requested, with good cause, a modified interim milestone deadline and the agency with primary jurisdiction at the time approves the modification within 30 days after the deadline has passed, the modified date shall become the effective interim milestone date under this schedule. The final milestone date may only be modified by EPA and Koch jointly amending the CAFO in writing.

Interim Milestone Dates:

May 15, 2000	Koch submits Sampling and Analysis Plan
July 1, 2000	MPCA approves Sampling and Analysis Plan
Aug. 1, 2000	Koch submits Draft Air Model, Risk Evaluation, and Statistical Comparison Protocol
Oct. 1, 2000	MPCA approves Draft Air Model, Risk Evaluation, and Statistical Comparison Protocol
Oct. 1, 2000	Koch submits analytical results
Nov. 1, 2000	MPCA approves lab results
Jan\ 15, 2001	Koch submits results of modeling
April 15, 2001	MPCA approves modeling results
May 15, 2001	Koch submits materials handling plan, records
June 15, 2001	MPCA approves materials handling, records
July 1, 2001	Koch submits complete petition
Sept 1, 2001	Public comment period begins
Oct 15, 2001	Public comment period ends
Nov 30, 2001	MPCA staff respond to comments and prepare recommendation

Final Milestone Date:

Dec 31, 2001 The de-listing petition process shall be completed by no later than December 31, 2001.

CERTIFICATE OF SERVICE

I hereby certify that I delivered a copy of the foregoing Complaint and Consent Agreement and Final Order, to the persons designated below, on the date below, by depositing it in the U.S. Mail, certified mail, return receipt requested, postage prepaid, at Chicago, Illinois, in an envelope addressed to:

Mr. Jeff C. Wilkes, Vice President
Koch Petroleum Group, L.P.
P.O. Box 64596
Saint Paul, Minnesota 55164-0596

and sent copies by first class mail to:

Jon Bloomberg, Esq.
Koch Petroleum Group, L.P.
P.O. Box 64596
Saint Paul, Minnesota 55164-0596

and

Mr. Thomas Townsend
Minnesota Pollution Control Agency
Metro District, Major Facilities Section
520 Lafayette Road North
Saint Paul, Minnesota, 55155-4194.

I have further filed the original of the Complaint and Consent Agreement and Final Order and this Certificate of Service in the Office of the Regional Hearing Clerk, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604 on the date below.

Dated this 31ST day of August, 2000.

Kimberly D. Houston

Secretary, Enforcement and Compliance Assurance Branch
U.S. EPA, Region 5

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